IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

CRL.A.No. 919 of 1998(C)

CC.1290/1997 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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APPELLANT/COMPLAINANT:

M.J. JACOB, S/O. V.C. JACOB,
JACOB PHARMACEUTICALS, YMCA, KOTTAYAM,
RESIDING AT VALAYIL POOVANTHARA,
THAZHATHANGADY P.O., KOTTAYAM DISTRICT

BY ADV. SRI.M.NARENDRA KUMAR

RESPONDENTS/ACCUSED:

1. STEPHIN ANTONY, W/O. ANTONY,
   KANDATHIL BUNGLOW, NEAR IRON BRIDGE, KOLLAM.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR

R2 BY PUBLIC PROSECUTOR SHRI K.C. SANTHOSH KUMAR
R1 BY ADVOCATE SRI.KURIAN GEORGE KANNAMTHANAM

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

Crl.Appeal No.919 of 1998

Dated this the 17th day of January, 2007

Judgment

This appeal is filed against the acquittal of the accused under section 256 (1) of the Code of Criminal Procedure. The proceedings would show that the complainant was very vigilant in prosecuting the case. Despite several postings, accused/first respondent was not present before court. Bailable warrant was issued. Even then, accused was not present, but, on the absence of the appellant for one day, that too, after filing an application for exemption, the court acquitted the accused under section 256 (1) Cr.P.C. This is a gross error in procedure. Even though criminal court has power to acquit the accused under section 256 (1) Cr. P.C. for the absence of the complainant, such a procedure can be taken only if the complainant is persistently absent. When accused was absent, presence of the complainant was not absolutely necessary.

In the above circumstances, without expressing any opinion regarding the merits of the case, order of acquittal is set aside and the matter is remanded.

Trial court is directed to proceed with the case. Both parties shall appear before the trial court on 5.3.2007.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL No.919/98

Judgment

Dated:17th January, 2007